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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,386	09/18/2003	Michael C. Withiam	03-203	7517

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Carlos Nieves, Esq.  
J. M. Huber Corporation  
333 Thornall Street  
Edison, NJ 08837-2220

EXAMINER

OH, SIMON J

ART UNIT	PAPER NUMBER
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1618

DATE MAILED: 09/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/666,386

Applicant(s)

WITHIAM ET AL.

Examiner

Simon J. Oh

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 June 2006.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-5 and 8-11 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1,3-5 and 8-11 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Papers Received***

Receipt is acknowledged of the applicant's amendment and response, both received on 27 June 2006.

### ***Claim Rejections - 35 USC § 112***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The rejection of Claim 10 under 35 U.S.C. 112, second paragraph, as being indefinite is maintained.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The rejection of Claims 2 and 7 under 35 U.S.C. 103(a) over Suffis *et al.* is rendered moot with the cancellation of those claims.

The rejection of Claims 1, 3-5 and 8-11 under 35 U.S.C. 103(a) Suffis *et al.* is maintained.

The rejection of Claim 6 under 35 U.S.C. 103(a) over Suffis *et al.* in view of Kuroda *et al.* is maintained.

***Response to Arguments***

Applicant's arguments filed 27 June 2006 have been fully considered but they are not persuasive. The standard that must be met for a rejection under 35 U.S.C. 103(a) is a teaching or suggestion of the applicant's claimed invention. In the view of the examiner, the prior art disclosure of alkali earth metal silicates, which would presumably include calcium and magnesium silicates, is sufficient to meet that burden of providing a suggestion of the instantly claimed invention, embodied by the broad scope of the limitations in the instant claims. In this case, the disclosure of a suggestion of the instantly claimed invention may be overcome by providing a showing of criticality or unexpected results, preferably through the submission of further evidence. However, such evidence has not been provided at this point.

The examiner also disagrees with the applicant's assessment of the Kuroda *et al.* reference. The examiner was not making the assertion that all particulates should exhibit the same particle sizes within the same type of composition. Rather, it was that the particle sizes of metal oxides disclosed by the prior art are deemed to cover a desirable range of sizes for use in deodorant compositions.

The applicant also has not properly addressed the rejection of Claim 10 under 35 U.S.C. 112, second paragraph. The rejection of this claim (referred to in error as "Claim 12" in the second paragraph of the rejection), is drawn to the recitation of a minimum amount of component (a) at about 0.5% by weight. However, the applicant then recites a maximum amount of component (b) of about 99% by weight. Such a maximum proportion cannot coexist with the stated minimum of component (a). The applicant has yet to clarify this discrepancy.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Simon J. Oh whose telephone number is (571) 272-0599. The examiner can normally be reached on M-F 8:30 am to 5:00 pm.

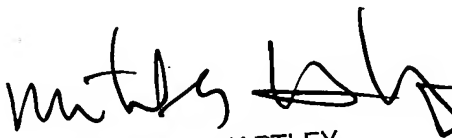
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Simon J. Oh  
Examiner  
Art Unit 1618

sj0

  
MICHAEL G. HARTLEY  
SUPERVISORY PATENT EXAMINER